REMARKS

This RCE is to enter amendments not previously entered under rule 116 and also to respond to remarks in the advisory action.

The following new remarks are offered in response to the advisory action

Response to the Examiner's comments regarding the term "vault"

Applicants respectfully submit that the Examiner misconstrues the specification with respect to the term "vault". With respect to the vault, the text in the specification says

> The receiver **4** may optionally operate in conjunction with a vault **7**. The purpose of the vault is to provide for storage of information about the outcome of each auction. The vault may be implemented as a component within the receiver **4** itself, or may be a separate and distinct unit. The vault may upload the rewards stored therein to a billing agent or its equivalent. This upload may take place on a regular basis, such as monthly, weekly, or even daily. The billing service would take care of transferring the reward from the commercial provider's account.

In reviewing this text, Applicants see a discussion of the use and implementation of a vault, but no indication that the definition of "vault" is different from that used in the art. In fact, the text clearly assumes that the reader knows what a vault is and does not need an explanation.

The Examiner appears to be thinking that the recently decided case Phillips v AWH, Corp, 415 F.3d 1303; 2005 U.S. App. LEXIS 13954; 75 U.S.P.Q.2D (BNA) 1321, July 12, 2005, Decided, As Amended July 14, 2005 requires that any term

definitions be found in the specification. That would be a flawed over-simplification of a very complicated opinion. Such an interpretation would be absurd, requiring every patent application to contain its own dictionary. The Philips opinion in no way intended to advance a concept that every single term of art must be defined in the specification or that public dictionaries have no use in claim interpretation. Quite on the contrary, the opinion states that dictionaries can still be useful in interpreting claim language. The CAFC, in later opinions, has continued to use dictionaries to interpret claim language, see e.g. The Massachusetts Institute of Technology v. Abacus Software, 462, F 3d 1344, 1351, 80 USPQ 2d (BNA) 1225 (Fed. Cir 2006), where a definition of "scanner" was taken from a dictionary.

Response to the Examiner's comments with respect to the term "agent"

Applicants respectfully submit that the Examiner misconstrues the specification with respect to the term "agent." The Examiner quotes from a paragraph that states

> An agent includes the information and/or algorithm for setting the auction bid price for a given commercial time spot. The information associated with an agent may be as simple as a fixed price for bidding, or as complex as an applet which, when invoked, gathers input information from the profile database, the vault, a system clock, an electronic programming guide, or elsewhere, and uses the gathered information to reach a decision as to the auction bid price for the time

> spot. The agent then conveys its bid to an auction manager, which would preferably reside on the receiver **4**.

This text states that the agent includes information ... for setting the auction bid price. The information associated with the agent may be ... a fixed price for bidding. The Examiner construes this to mean that the agent is the fixed price for bidding. This is not what the specification says. The information is included in or associated with the agent. The information is not itself the agent. The text also says "the agent ... conveys its bid." Again, it is clear here that the bid is not the agent. The bid is conveyed by the agent. Accordingly, Applicants respectfully submit that the Examiner's construction of the meaning of "agent" is contrary to the plain language of the specification. Moreover, the specification clearly does not attempt to redefine the concept of agent to be something other than what is used in the art.

Response to the Examiner's new comments regarding "Dutch auction"

The Examiner now cites Fisher. This document relates to people engaging in an online multi-bidder auction, not to software agents conducting bidding. Applicants accordingly respectfully submit that it is not analogous art.

Moreover, Applicants respectfully submit that the Examiner mischaracterizes the reference. The bottom of col. 5 to top of col. 6 cited by the Examiner relates to highest bid auctioning. The text at col. 9-10 defines "Dutch Auction" as

> a "Dutch Auction" format, wherein the electronic auction system awards the merchandise to all of the top bidders for whom there is available inventory at the price bid by the lowest successful bidder.

This definition fails to meet the limitations of claim 9, which recites

> setting a desired monetary value, and then reducing the desired monetary value until the agent of at least one commercial places a bid at least equal to the desired monetary value.

In fact, it appears from Fisher that a "Dutch auction" is something quite different from what is recited in claim 9.

The following remarks are quoted from the prior amendment under rule 116

Some of the claims have been amended to change "a" to --at least one-- or "the" to --one or more--. These changes are not narrowing amendments.

"Commercials" was changed to --agents-- in the "auctioning" element of several claims. This is to correct an obvious error and does not narrow the claim.

Claims 2, 12 and 16 have been amended to put them in independent form. This does not change the scope of these claims.

Art rejections

Since the references are complex, Applicants will confine their remarks to those portions cited by the Examiner, except as otherwise indicated. Applicants make no representation as to the contents of other portions of the references.

Per the Examiner's suggestion, Applicants have added the broadcast limitation to the independent claims herein. The reference fails to teach or suggest that broadcast television could be combined with separately broadcast commercials that are selected via auction. Reconsideration in light of the amendment is respectfully requested.

REMARKS

The rejection of claims 2 and 12 are respectfully traversed. The portion of the reference cited by the Examiner fails to teach or suggest the use of a vault to store a winning bid. Instead the reference cites storing the winning bid in a cookie. Applicants attach a definition of "data vaulting" from the online encyclopedia called www.pcwebopaedia.com. Per this definition data vaulting includes sending data off site. In the case of the present television system, "off site" is more loosely defined, as shown in Fig. 1 as being a separate hardware device from the television. The point of a vault is something more secure than a cookie, which is readily changed from the Internet.

The official notice regarding "Dutch Auction" in the rejection of claim 9 is respectfully traversed. If this concept is in fact well known, as the Examiner alleges, it should be described in documents that the Examiner can provide. Without access to these documents, Applicants cannot evaluate whether it is obvious to one of ordinary skill in the art to combine them with the references already of record. Such documentation is accordingly respectfully requested.

The rejection of claim 16 is respectfully traversed. The Examiner cites Zigmond as showing delivering an agent with a commercial. Applicants respectfully submit that the Examiner mischaracterizes the reference. The portion cited by the Examiner at least states that what is delivered are "rules." "Rules" are not an agent. Applicants enclose herewith an definition of "agent," again from the online Webopaedia. As indicated in this definition, an agent is a program that operates in the background. Rules are not a program, necessarily. Rules would typically be used by a program. Applicants also have enclosed a definition of "rule." Applicants accordingly respectfully submit that the Examiner has failed to make a prima facie case against claim 16.

Any of the Examiner's rejections and/or points of argument that are not addressed above would appear to be moot in view of the following. Nevertheless,

REMARKS

Applicants reserve the right to respond to those rejections and arguments and to advance additional arguments at a later date. No arguments are waived and none of the Examiner's statements are conceded.

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Applicants respectfully submit that they have addressed each issue raised by the Examiner — except for any that were skipped as moot — and that the application is accordingly in condition for allowance. Allowance is therefore respectfully requested.

Respectfully submitted,

By /Anne E. Barschall/

Anne E. Barschall, Reg. No. 31,089
Tel. no. 914-332-1019
Fax no. 914-332-7719
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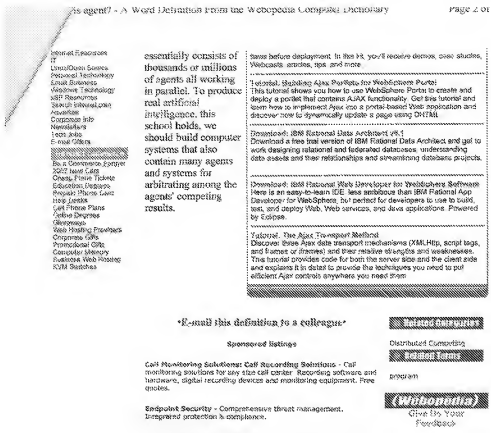

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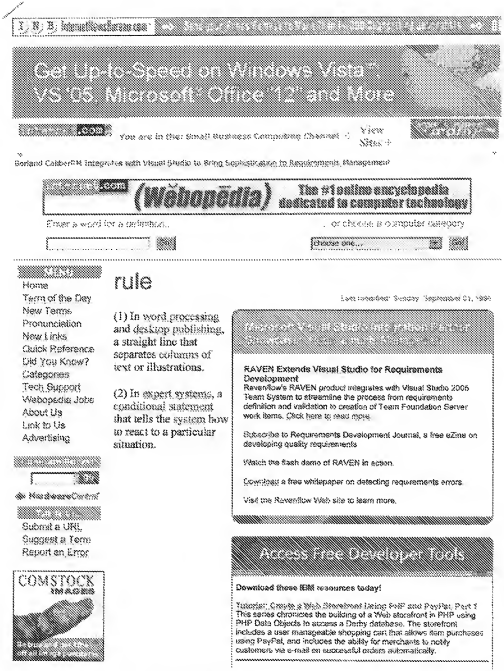
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